

# **EXHIBIT F**

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE SUSAN ILLSTON, JUDGE

IN RE: TFT-LCD (FLAT-PANEL) )  
ANTITRUST LITIGATION. ) NO. C 07-MDL-1827 SI

San Francisco, California  
Monday  
August 26, 2013  
8:58 a.m.

Individual Cases:  
CASE NO. 10-CV-4572  
CASE NO. 12-CV-4114

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Best Buy Plaintiffs:

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(Appearances continued, next page)

**APPEARANCES, CONTINUED:**

**For Toshiba Defendants:**

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701 Thirteenth Street, N.W.  
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BY: CHRISTOPHER M. CURRAN, ESQ.  
JOHN H. CHUNG, ESQ.  
J. MARK GIDLEY ESQ.  
MICHAEL HAMBURGER, ESQ.  
HEATHER BURKE, ESQ.  
MARTIN TOTO, ESQ.

**Also Present:**

Naomi Kusakabe  
Alex Tsai  
Paul Chiu  
William Johnson  
Julius Christensen

**Reported by:**

BELLE BALL, CSR #8785, CRR, RDR  
CONNIE KUHL, CSR #13173, RMR, CRR  
Official Reporters, U.S. District Court

1 o'clock. I have no idea about the cross. But I don't have  
2 another witness until Dr. Bernheim comes tomorrow morning at  
3 8:30, largely because of the change of the schedule that we  
4 had.

5 **THE COURT:** All right.

6 **MR. SILBERFELD:** I just wanted to point that out.

7 **MR. CURRAN:** That could be a problem, your Honor,  
8 because we all -- I think we all want to conclude by the end  
9 of the day tomorrow. And if there's a gap, that could  
10 threaten that situation. I don't know what the change of the  
11 schedule Mr. Silberfeld was referring to, but....

12 **MR. SILBERFELD:** We were supposed to be dark these  
13 two days and we planned around this, and when those days came  
14 back on the calendar -- that's the schedule I'm talking about.

15 **THE COURT:** All right. We'll just see how it goes.

16 **MR. CURRAN:** Okay.

17 (Recess taken from 12:01 to 12:50 p.m.)

18 **DEPUTY CLERK:** Come to order.

19 **THE COURT:** You may be seated.

20 Is it correct that as to the motion concerning damage  
21 figures, defendant's trial brief to exclude Best Buy's experts  
22 from testifying to new damage figures on rebuttal -- there's  
23 been no written opposition to that, right?

24 **MR. SILBERFELD:** Right. That was filed this morning.

25 **THE COURT:** Okay. As to the one, Best Buy's motion

1 to allow evidence related to duplicative discovery by the  
2 consumer class under the Minnesota Antitrust Act, the Court's  
3 ruling will be that Mr. Frankel cannot testify to the jury  
4 about any of these things. I will give instructions at the  
5 end of the trial, together with all the other instructions,  
6 about damages. And if and to the extent it's appropriate  
7 after trial that you take further evidence from him, we can  
8 talk about it.

9 **MR. SILBERFELD:** Okay.

10 **THE COURT:** So that's that.

11 Now, with respect to the damage figures, what do you  
12 propose that I do about that?

13 **MR. SILBERFELD:** Well, the objection, as I understand  
14 it, is that the damage figures are different.

15 **THE COURT:** Right.

16 **MR. SILBERFELD:** And they are different.

17 **THE COURT:** And they are different.

18 **MR. SILBERFELD:** They are different. They are lower.  
19 They are lower, for two principal reasons:

20 One, the Court ruled -- and I don't recall the exact  
21 date -- about various NEC entities. Those NEC entities were  
22 in the direct purchase claim. They came out of there. So  
23 Dr. Bernheim's figures went from about \$285 million to about  
24 282, or 283.

25 **THE COURT:** That already happened.

1           **MR. SILBERFELD:** That already happened. Those  
2 damages then become indirect in nature. And they were added  
3 in to Dr. Frankel's damage figures, causing those damage  
4 figures to go up slightly. But the total damage figure  
5 doesn't change as between the two claims.

6           The other thing that happened is that there were, I think,  
7 five very, very small firms where the linking up, if you will,  
8 of their role in the conspiracy did not happen in the course  
9 of our case in chief. And we instructed both Dr. Bernheim and  
10 Dr. Frankel to remove any damages associated with those firms  
11 from their damage figures.

12           **THE COURT:** Which they are prepared to do, but have  
13 not yet done?

14           **MR. SILBERFELD:** Have done.

15           **THE COURT:** Have they done it in trial here?  
16 Already?

17           **MR. SILBERFELD:** No.

18           **THE COURT:** No, but they're --

19           **MR. SILBERFELD:** They're about to.

20           **THE COURT:** Yes. Okay.

21           **MR. SILBERFELD:** And the Court may recall the  
22 testimony of both Bernheim and Frankel to the effect that:  
23 It's an easy mechanical thing to do. Does not change the  
24 model; does not change the program.

25           **THE COURT:** Yes.

1           **MR. SILBERFELD:** And we provided not only the new  
2 figures, but the backup information as to how to run the  
3 various models to check the result, if you will. And I  
4 believe we've provided that to counsel last Thursday.

5           **MR. GIDLEY:** If I may, your Honor?

6           **THE COURT:** Briefly, yes.

7           **MR. GIDLEY:** Your Honor, it's not a matter of mere  
8 addition. Dr. Bernheim's number went down 5 million. But  
9 Dr. Frankel's number goes up 6.2 million. So they're not  
10 dollar-for-dollar. This isn't just a row from a chart.  
11 Dr. Frankel, we're talking about four or five different  
12 computer programming runs that you have to do. For  
13 Dr. Bernheim, when we asked for the backup, this is what we  
14 got, Saturday night at 8:00 p.m. -- I can hand it up if you  
15 want to see it. I know you've got three feet with you of  
16 paper, but it's another foot -- another inch of paper with  
17 various computer program runs.

18           For Dr. Bernheim, it's 30 different programming changes,  
19 so it's not mere arithmetic. For Dr. Frankel, Dr. Frankel's  
20 backup is something like four or five different computer runs.

21           Our point is very simple. We're in rebuttal. It's not in  
22 their report. If you got all of this dumped on you in  
23 discovery, you'd want a deposition. That's the only way to  
24 cut through all this. There's something fishy when  
25 Dr. Bernheim gets rid of NEC and gives it over to Dr. Frankel

1 and it's not dollar-for-dollar.

2           **THE COURT:** Yes, and what you're doing now is  
3 arguing, and that's fine. There's going to be plenty of time  
4 to argue. I understand your argument. I might even be  
5 persuaded by it, but I don't think it's a reason to disallow  
6 the testimony. So the motion to keep it out, if that's what  
7 it was, is denied; or the motion to let it in, if that's what  
8 it was, is granted.

9           But you may fully explore all of the things you just  
10 talked about with the witness.

11           **MR. GIDLEY:** Thank you, your Honor.

12           **THE COURT:** All right. Thank you.

13           Are we ready?

14           **MR. SILBERFELD:** Ready to go.

15           (The jury enters the courtroom)

16           (The following proceedings were held in the presence of  
17 the Jury)

18           **THE COURT:** Welcome back, ladies and gentlemen. You  
19 may all be seated.

20           All right. Plaintiffs may call their next witness.

21           **MR. SILBERFELD:** Thank you, your Honor. Plaintiff  
22 recalls Dr. Alan Frankel.

23           **THE COURT:** Okay.

24           **MR. CURRAN:** Your Honor, Mr. Toto will handle this  
25 witness for Toshiba.



**CERTIFICATE OF REPORTERS**

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Belle Ball 

Monday, August 26, 2013

I, CONNIE KUHL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Connie Kuhl \_\_\_\_\_

Monday, August 26, 2013